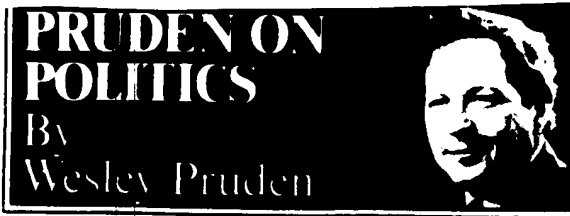


CLASSIFIED
EXCERPT 2-8

WASHINGTON TIMES
5 May 1986



Crime won't pay, unless you print it

If Alger Hiss had spent his money on a Mimeograph machine instead of a Woodstock typewriter, he might even now be enjoying the life of the publisher of the Foggy Bottom Letter.

Benedict Arnold should have put down on paper exactly what it was that he wanted to give the British, and sent it to London as a letter to the editor of The Times.

Ethel and Julius Rosenberg ought to have sent the blueprint for the atomic bomb to Walter Pincus at The Washington Post. He could have written it up for Page One, and the Rosenbergs' secret life of sending secrets to Moscow might not have turned out to be such a gas. (The Soviets would have had the extra step of translating the Pincus prose from his native pidgin Urdu into English, but that's marginally less difficult than figuring out by trial and error how to make an atomic bomb.)

If only the American Society of Newspaper Editors had done earlier what it decided to do last week — to persuade a court that newspaper reporters are exempt from the U.S. laws against espionage.

"We have the First Amendment," the editors are saying, in paraphrase of Chevy Chase, "and you don't."

The editors filed a friend-of-the-court brief in the case of Samuel Loring Morison, the former U.S. navy intelligence analyst who was convicted of espionage and sentenced to two years in prison for leaking three secret photographs — that's secret, not "secret," as The Post styles it — demanding that "the media" be declared above the law.

The Justice Department has hinted, more in the nature of crying "boo!" at timid editors than in the expectation of actually following through, that it might one day prosecute leakee as well as leaker.

What the editors want to do, their lawyer explains, is to make sure that "the media" get an advance excuse for whatever outrages it might dream up in the future. "There's no case law on that," says the lawyer, Richard M. Schmidt, Jr., "but there is legislative history."

The "legislative history" he's talking about is an amendment to the Internal Security Act of 1950, which includes this precious language: "Nothing in this act shall be construed to authorize, require or establish military or civilian censorship or in any way to limit or infringe upon freedom of the press or of speech as guaranteed by the Constitution of the United States, and no regulation shall be promulgated hereunder having that effect."

Good words, and everybody who loves free speech, whether in the press or on the street or even in the pulpit, can only say, "Amen!" But from that, some lazy reporters and timid editors want to construe all manner of special privilege — to steal secrets, to buy information, to be irresponsible without having to answer for it.

There are, in fact, a lot of heavy-handed attempts by government bunglers and bureaucratic incompetents to wrap their wretched impotence in the mantle of secrecy. This might even be the story in the Morison case. Newspapers and magazines have a duty to expose chicanery and skulduggery, and editors have to decide when a story is worth risking jail for.

The First Amendment prohibits censorship and prior restraint. There's nothing in it to prevent editors from behaving responsibly, though some of them think it does. Some editors — and a lot of young reporters — construe the First Amendment as a guarantee to make journalism a soft life, something like a sinecure in academe, a think tank, or in the bureaucracy. They imagine that it was meant to protect reporters from getting traffic tickets when they park their cars in front of the fire plug at the court house.

If the American Society of Newspaper Editors wins this exemption, clever criminals can cite it as precedent when they start their own publications — the Rapists Newsletter, the Journal of Better Burglary, the American Bankrobber — to qualify for the "journalist's exemption" to the law.

Publish or perish, you might say.